

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 29-940496**

**Controlled Substance Excise Tax**

**For The Period: 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax—Liability**

**Authority:** IC 6-7-3-5; Bryant v. Indiana Department of State Revenue, 660 N.E.2d 290 (Ind. 1995); Cliffitt v. Indiana Department of State Revenue, 660 N.E.2d 310 (Ind. 1995); Hall v. Indiana Department of State Revenue, 660 N.E.2d 319 (Ind. 1995).

The taxpayer protests the assessment of controlled substance excise tax.

**STATEMENT OF FACTS**

On January 12, 1994 the taxpayer was found in the restroom of his school with marijuana. The Department was notified of the marijuana and the taxpayer was assessed tax on 6.4 grams of marijuana. More facts will be provided below.

**I. Controlled Substance Excise Tax—Liability**

**DISCUSSION**

The Indiana Code, at IC 6-7-3-5, provides that the manufacture, possession or delivery of marijuana is taxable. This law is called the Controlled Substance Excise Tax, and is commonly referred to as "CSET." Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. The taxpayer then bears the burden of proving that the proposed assessment is wrong.

The crux of the matter is whether or not the taxpayer possessed the marijuana. The facts, as outlined in the police report, are as follows. The taxpayer went into the restroom of his school.

While in the restroom, another person (hereinafter “X”) called the taxpayer over and handed the taxpayer a small baggie. Moments after X handed the taxpayer the baggie the assistant principal of the school entered the restroom. The taxpayer, upon the advice of X, quickly attempted to hide the baggie under his shirt. The baggie was found by the assistant principal; it contained 6.4 grams of marijuana.

The taxpayer did not arrange to meet X in the restroom. Per the police officer’s report, the taxpayer was cooperative with the police officer during the interview by the officer. The officer indicated in his report that X was uncooperative. The officer also stated that the taxpayer was angry with X for involving him in the incident. The officer, using a technique of interviewing, told both the taxpayer and X that the baggie would be “dusted” for latent fingerprints within the baggie. The officer then asked both parties if their prints would be found—the taxpayer immediately answered “no,” and X answered that his prints would probably be found. The officer surmised that the baggie had been in the possession of X.

The prosecutor’s office did not file a petition in Juvenile Court against the taxpayer. Also, per the police report, X had a history of “serious problems.” The taxpayer was released to his parents; X was transported to the juvenile detention center. Based upon the foregoing facts, the Department finds that the taxpayer was not in possession of the marijuana.

### **FINDING**

The taxpayer’s protest is sustained.